

**IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

**INDIAN HARBOR INSURANCE
COMPANY**

Plaintiff,

V.

**KB LONE STAR, INC. F/K/A
LONE STAR L.P. F/K/A KAUFMAN
& BROAD LONE STAR, L.P.,
Defendants.**

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CIVIL ACTION NO. 4:11-cv-1846

DECLARATION OF GARY N. SCHUMANN

STATE OF TEXAS

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COUNTY OF TRAVIS

I, Gary N. Schumann, pursuant to 28 U.S.C. § 1746, declare as follows:

“My name is Gary N. Schumann. I am over the age of 21, have never been convicted of a felony or a crime involving moral turpitude and am in all respects competent to make this declaration. The facts stated in this declaration are true, correct and within my personal knowledge.

I am an attorney at law, licensed in the States of Texas and Colorado, with the law firm of SAVRICK, SCHUMANN, JOHNSON, MCGARR, KAMINSKI & SHIRLEY, L.L.P. My firm and I are counsel for Indian Harbor Insurance Company in the above named and numbered lawsuit. In this action, Indian Harbor seeks a declaratory judgment that it owes no duty to defend or indemnify KB for the claims against it in the underlying lawsuits. The “Underlying Lawsuits” are Cause No. 2009-CI-08711; *Jesse Arias and Mary Arias; Thomas Arispe, Jr. and Luis Cintron and Eloisa Cintron, et al v. KB Home; KB Home Lone Star, Inc. L.P. f/k/a Kaufman & Broad Lone Star, L.P.; and MAGI Realty, Inc. d/b/a Mirasol Joint Venture Team*; In the 408th Judicial

District of Bexar County, Texas (“the *Arias Suit*”) and Cause No. 2007-CI-05258; *San Antonio Housing Authority v. MAGI Realty, Inc. d/b/a Mirasol Joint Venture Team v. KB Home Lone Star, L.P. f/k/a Kaufman & Broad Lone Star, L.P.*; in the 408th Judicial District Court of Bexar County, Texas (“the *SAHA Suit*”).

As counsel of record for Indian Harbor in this action, I have reviewed the factual and legal issues involved as well as relevant documents. I therefore have become, and am personally familiar with, the insurance policy that Indian Harbor Insurance Company issued to Innovative Concrete Construction, Inc. That policy is Policy Number AIL022000044, effective October 18, 2000 to October 18, 2001. I have also reviewed Indian Harbor’s motion for summary judgment filed in this action and the exhibits in support of that motion provided in an appendix. The insurance policy submitted as an exhibit to that motion is a true and correct copy of Policy Number AIL022000044, effective October 18, 2000 to October 18, 2001, which is the insurance policy that Indian Harbor issued to Innovative Concrete Construction, Inc.

For the same reasons, I have also become familiar with materials filed in the Underlying Lawsuits, and I obtained from the court copies of the following materials filed in the Underlying Lawsuits:

- Plaintiffs’ Eighth Amended Petition; and
- San Antonio Housing Authority’s Ninth Amended Petition and First Amended Counterclaim.

Submitted as evidence in support of Indian Harbor’s motion for summary judgment in the appendix is a true and correct copy of each of the foregoing copies.

I, Gary N. Schumann, declare under penalty of perjury that the foregoing is true and correct.”

Executed on this 2nd day of September, 2011.

A handwritten signature in black ink, appearing to read "Gary N. Schumann", written over a horizontal line.

Gary N. Schumann